

voting to confirm consensus nominations before the end of the Senate session, a practice followed by Democrats and Republicans with Presidents Reagan, George H.W. Bush, Clinton and George W. Bush.

Their tactics have worked, to the detriment of the Federal courts and the American people. By nearly any measure we are well behind where we should be. Three years into President Obama's first term, the Senate has confirmed a lower percentage of President Obama's judicial nominees than those of any President in the last 35 years. The Senate has confirmed just over 70 percent of President Obama's circuit and district nominees, with more than one in four not confirmed. This is in stark contrast to the nearly 87 percent of President George W. Bush's nominees who were confirmed, nearly nine out of every 10 nominees he sent to the Senate.

We remain well behind the pace set by the Senate during President Bush's first term. By this date in President Bush's first term, the Senate had confirmed 170 Federal circuit and district court nominations on the way to 205, and had lowered judicial vacancies to 46. By the time Americans went to the polls in November 2004, we had reduced vacancies to 28 nationwide, the lowest level in the last 20 years. In contrast, the Senate has confirmed only 125 of President Obama's district and circuit nominees, and judicial vacancies remain over 85. The vacancy rate is double what it was at this point in the Bush administration.

I wonder when I hear some Republican Senators claim credit for progress on nominations and point to what they like to call "positive action"—how they can ignore the 19 judicial nominations being blocked for no reason. I wonder how they can claim progress for the American people when judicial vacancies remain well above 80 more than 3 years into President Obama's first term. In this setting, after years of delay and lack of real progress, it is troubling to hear Senate Republicans already talking about how they plan to resort to the Thurmond Rule to shut down all judicial confirmations for the rest of the year. Their obstruction has already resulted in the Senate having confirmed 45 fewer judicial nominations after 3 years of the Obama administration than after 3 years of the Bush administration. We still have a long way to go to catch up and to lower judicial vacancies before anyone talks about a confirmation shutdown.

I wish Senate Republicans would abandon their rhetoric and do as Senate Democrats did when we worked to confirm 100 of President Bush's judicial nominees in 17 months. In fact, we continued to work to reduce judicial vacancies by considering and confirming President Bush's judicial nominations late into the Presidential election years of 2004 and 2008, reducing the vacancy rates in those years to their lowest levels in decades.

The cost of this across the board Republican obstruction is borne by the American people. More than half of all Americans, nearly 160 million, live in districts or circuits that have a judicial vacancy that could be filled today if Senate Republicans just agreed to vote on the nominations that have been reported favorably by the Judiciary Committee. It is wrong to delay votes on these qualified, consensus judicial nominees. The Senate should fill these numerous, extended judicial vacancies, not delay final action for no good reason.

The result of the Senate Republicans' inaction is that the people of New York, California, West Virginia, Florida, Nebraska, Missouri, Washington, Utah, the District of Columbia, Nevada, Louisiana, and Texas are without the judges they need. The result is that judicial emergency vacancies in Florida, Utah, California, Nevada and Texas remain unfilled.

Our courts need qualified Federal judges, not vacancies, if they are to reduce the excessive wait times that burden litigants seeking their day in court. It is unacceptable for hard-working Americans who seek their day in Federal court to suffer unnecessary delays. When an injured plaintiff sues to help cover the cost of medical expenses, that plaintiff should not have to wait for 3 years before a judge hears the case. When two small business owners disagree over a contract, they should not have to wait years for a court to resolve their dispute. With one in 10 Federal judgeships currently vacant, the Senate should have come together to remedy the serious judicial vacancies crisis on Federal courts around the country.

This Republican obstruction began long before President Obama's recent recess appointment of a handful of Executive branch nominees needed for the Consumer Financial Protection Bureau and the National Labor Relations Board to function. Indeed, despite 3 years of delays and across the board obstruction of his judicial nominations, President Obama has not recess appointed a single judicial nominee. That is something President Bush did, not President Obama. Senate Democrats that year consented to consider noncontroversial judicial nominations, confirming a total of 205 circuit and district court nominations in President Bush's first term and lowering judicial vacancies dramatically. In fact, the Senate proceeded to an up or down vote and confirmed 1 of the judicial nominees President Bush had recess appointed, William Pryor to the Eleventh Circuit.

Senate Republicans have been blocking votes on 18 of the President's judicial nominees since last year. Eight of the judicial nominations Republicans are blocking were reported unanimously by the Judiciary Committee in September and October last year. Another 5 nominations were reported in November, and 4 in December. All of

these judicial nominations could and should have been considered by the Senate last year. Indeed, when Republicans held up scores of nominees in December, including these judicial nominees, they did so to "punish" the administration for not assuring them that the President would not use his recess appointment power. That delay, now of more than 2 months, has already taken a measure of revenge. They continue to hurt the country by engaging in more obstruction and delay now to seek a double measure of retaliation.

Instead of exacerbating the conflict, Senate Republicans should reconsider their tactics and moderate their use of filibusters and stalling. This President has reached out to work with Senators from both parties with respect to judicial nominations. Every one of the 19 judicial nominations awaiting final Senate action has the support of his or her home State Senators, Republican as well as Democratic. There is no excuse for continued stalling of President Obama's consensus judicial nominees. The courts and the country cannot afford another year of across the board delays of President Obama's judicial nominations. I urge votes on Jesse Furman for the Southern District of New York, Cathy Bencivengo for the Southern District of California, Gina Groh for the Northern District of West Virginia, Margo Brodie for the Southern District of New York, Adalberto Jordan for the Eleventh Circuit, Beth Phillips for the Western District of Missouri, Thomas Rice for the Eastern District of Washington, David Nuffer for the District of Utah, Stephanie Thacker for the Fourth Circuit, Michael Fitzgerald for the Central District of California, Ronnie Abrams for the Southern District of New York, Rudolph Contreras for the District of Washington DC, Susie Morgan for the Eastern District of Louisiana, Jacqueline Nguyen for the Ninth Circuit, Gregg Costa for the Southern District of Texas, David Guaderrama for the Western District of Texas, and Brian Wimes for the Eastern and Western Districts of Missouri.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Oklahoma.

ORDER OF PROCEDURE

Mr. INHOFE. Mr. President, I see the junior Senator from Connecticut in the Chamber. If he wishes to speak, it is my understanding this is Democratic time now. If he wishes to go before me, that is perfectly all right. I ask unanimous consent that at the conclusion of his remarks I be recognized in morning business because I do want to talk about the transportation bill that is coming up.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Connecticut.

Mr. BLUMENTHAL. Mr. President, I thank the distinguished Senator from

Oklahoma for his courtesy and his leadership on so many issues.

Mr. President, I want to particularly say to my colleague from Vermont how much I appreciate his leadership on the Judiciary Committee, where I serve. Leadership is the mark of his work there. He brings together Members of both parties on so many issues, including this one involving the Federal judiciary. It is, as he has said so eloquently, one of the marvels of the world, one of the historic accomplishments of our republican democracy, that we have a truly independent judiciary that exemplifies the qualities of professionalism, scholarship, integrity, and, yes, independence.

We are here today because we have a crisis in our judiciary. It is a crisis not created by our judges but by this body. It is a judicial vacancy crisis because nearly 1 out of 10—I repeat, 1 out of 10—judgeships in this country are now vacant. The vacancies are double what they were at this point in President Bush's first term.

Every time I go back to Connecticut—as I am sure happens to the Presiding Officer in his State of West Virginia and to Senator INHOFE in Oklahoma—people ask me: Why can't you do better in Washington? Why can't you bring both parties together and avoid the waste and the acrimony and rancor and the gridlock that is the reason for this judicial vacancy crisis? We need to come together and avoid the kind of paralysis that has such lasting and damaging effects on our judiciary.

The President has done his work in recommending qualified nominees to this body. The Judiciary Committee has done its work in reporting many of these judicial nominees to the floor, in many cases with unanimous support. Despite that unanimous support, those nominations languish here.

As we speak, 19 judicial nominations are still pending on the Senate's Executive Calendar. Mr. President, 16 of those nominations were reported unanimously to the floor and all but 2 of them are consensus nominees who received strong bipartisan support in the Judiciary Committee.

They have been blocked by the Republican minority. They have been blocked from up-or-down votes. They have been denied those up-or-down votes. That is unfair not only to them but to the American people. It is damaging to this country. It undermines the independence of the judiciary, its credibility and respect. It causes delays in the decisions on cases that vitally affect ordinary men and women who come to our Federal courts for justice. The old saying "justice delayed is justice denied" holds true whether it is the great historic cases of this country or the ordinary, mundane, routine cases that involve injuries to individual plaintiffs or defendants. And it discourages qualified people from permitting their names to be placed in nomination. The uncertainty of those

delays, the need to put their lives on hold, when they are lawyers in private practice or judges serving on the bench now, causes a severe disincentive that deters qualified people from beginning this uncertain process.

Outside of Washington, there is a clear consensus that the Senate must do better. Outside of the Senate, there is a clear consensus that we need bipartisan cooperation. Not just among politically elected leaders, but the Chief Justice of the U.S. Supreme Court, members of the bar on both sides of the aisle all agree we must move these nominations. So I call on my colleagues, as the chairman of the Judiciary Committee has done, to do better. President Obama has nominated qualified members of the bar to serve on our district courts, including, most recently, Michael Shea of my State to replace Judge Droney, who has just been confirmed as a member of the court of appeals.

Judge Droney's nomination waited here on the Senate calendar for 130 days, despite the clear consensus in his favor. Eventually, he was confirmed by a vote of 88 to 0. That delay, in turn, caused a delay to the nomination of a district court judge to replace him.

I am hopeful Michael Shea will be confirmed expeditiously.

We should never minimize the importance of careful vetting and scrutiny when it comes to these nominees. But once that process is complete in the Judiciary Committee, blocking these nominees can only be bad for the American people, as well as for the 160 million Americans who live in districts and circuits with vacancies whose nominees are sitting on the Senate calendar. They should not have their ability to access justice denied or delayed. We should reduce the burdens on our courts as quickly as possible so our system of justice will continue to be—and justifiably—regarded as one of the great marvels in the history of democracy, of governance in this world, on this planet.

Our nominees deserve prompt and fair consideration by the full Senate, and I am hopeful the Senate will do better.

I yield the floor.

The PRESIDING OFFICER. The Senator from Oklahoma.

HIGHWAY REAUTHORIZATION

Mr. INHOFE. Mr. President, we are going to be considering today—and I think the rest of this week, and probably into next week—one of the most significant things we are supposed to be doing here.

I wish to start off by saying—in endorsing and encouraging a highway reauthorization bill—I want people to know this is coming from someone who is a conservative. I think there are a lot of conservative organizations out there that have mistakenly thought of this as being a big spending bill without realizing this has been, since its in-

ception back during the Eisenhower administration, an approach to building roads, highways, infrastructure that is necessary in this country, and to have that as a top priority.

There are some problems that have come up with the highway trust fund, and I want to share that with my colleagues but, first of all, make sure everyone knows, who might be watching—and particularly some of the organizations that are conservative organizations—that these words are coming from me. I have probably been recognized as the most conservative Member of this body as much as anybody else has, maybe more. Yet, I have always said—even though I am a leading conservative—there are two areas where I am a big spender. One is in national defense and one is in our infrastructure.

For that reason, I say to the Presiding Officer, when I was first elected back in 1994, I selected two committees to be on. One was the Armed Services Committee, where I could try to keep a strong national defense. The other was the Environment and Public Works Committee. I am now the second ranking member on the Armed Services Committee and the ranking member of the Environment and Public Works Committee. Back when the Republicans were a majority, I was actually the chairman of that committee. That is when we did our last bill.

Our last highway reauthorization bill was in 2005. It was one that went through the process and was very successful. Conservatives and liberals alike joined and said this is a major function of America. This is what we are supposed to be doing here.

A strong defense and our infrastructure system are not going to be done by anybody else. It is going to have to be done by us. If we want to make sure we maintain a strong national defense, which this President has not been doing with the cuts he has made—actually, we could have as much as \$1 trillion in cuts in our defense budget over the next 10 years, all due, quite frankly, to one person. That is President Obama. So he does not care that much about defending America in putting the resources there. Here is a President who, in his own budget, has proposed a deficit each year, for four budgets, of over \$1 trillion each year.

You would think, with these huge deficits, we would not be having a problem in defense spending, as well as in our roads and highways, in coming up with a bill that would be a transportation reauthorization bill. The transportation reauthorization bill for 2005—where I was the sponsor of it because I was chairman of the committee—was a \$286.4 billion bill. It was one that even at that time barely maintained what was out there already. Certainly I do not have to tell the occupier of the chair from West Virginia that I have been through his State and there is a lot of room for improvements in the road system, and I know he is a strong supporter of this. This is certainly true